

**BEFORE THE**  
**STATE OF CALIFORNIA**  
**OCCUPATIONAL SAFETY AND HEALTH**  
**APPEALS BOARD**

In the Matter of the Appeal of:

COUNTY OF LOS ANGELES,  
DEPARTMENT OF PUBLIC WORKS  
900 South Fremont Avenue  
Alhambra, CA 91803-1331

Employer

Docket No. 07-R1D2-2540

**DECISION AFTER  
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having taken the petition for reconsideration filed by the Division of Occupational Safety and Health (Division) under submission, renders the following decision after reconsideration.

**JURISDICTION**

On June 8, 2007, a representative of the Division issued one Citation to County of Los Angeles, Department of Public Works (Employer) after an accident investigation regarding an incident that occurred on March 8, 2007. The citation alleged a serious violation of Title 8, California Code of Regulations section 3384(b) [use of gloves prohibited when risk of entanglement in machine present], and proposed a penalty of \$18,000.<sup>1</sup>

Employer filed an appeal contesting the violation and its classification. After a hearing, held on June 25, 2009, an Administrative Law Judge (ALJ) for the Board issued a Decision affirming the citation and the serious classification, and imposed a penalty of \$18,000.00. Employer filed a petition for reconsideration contending the decision was issued in excess of the Board's powers, that the evidence does not justify the findings, and that the findings do not justify the decision. (Labor Code section 6617.) The Division filed an answer. The Board took the matter under submission, and after review of the record and arguments, issues this Decision After Reconsideration.

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<sup>1</sup> All references are to title 8, California Code of Regulations unless otherwise indicated.

## **EVIDENCE**

The Decision accurately states the evidence in the record, and we adopt the ALJ's summary of the facts. In short, an employee of Employer sustained a serious crushing injury when his gloved hand was drawn in to the sheet metal fabrication rolling machine. Operators wore gloves and fed the sheet metal by hand into the space between two opposite-turning rollers. The rollers compressed the sheet metal between them to attain the desired form. As the sheet metal had sharp edges, Employer required operators of the machine to wear gloves. However, the manufacturer warned that gloves should not be worn when operating the machine.

The machine's rollers were smooth in that they did not have ridges, teeth, or other implements designed to steady or grasp the material being fed between them. The approximately ¼-inch space between the rollers was the thickness of the sheet metal (here a 10' x 10' piece) being processed. The machine had an emergency stop button and a rope-type guard that warned an operator that he is approaching within approximately 18 inches of the machine's point of operation.<sup>2</sup> The rope was at an operator's knee level, and in no way prohibited the operator from reaching in to the machine's pinch point, the place where the two rollers met to form the ¼-inch gap into which the sheet metal was drawn. The machine had no guard protecting the operator from the pinch point. Sheet metal was fed in to the machine at or below the operator's waist height.

In the normal operation of the machine, there was no need for the operator to extend his hands in to the pinch point between the rollers. However, there was no guard preventing the operator's hands from contacting the rollers. The subject injury occurred when the operator attempted to adjust the sheet metal as it was being fed in to the rollers without stopping the machine. This adjustment maneuver was not prevented by any guards on the machine, or prohibited by any rule enforced by Employer, nor was the injured employee reprimanded or disciplined for adjusting the material without turning off the machine.

## **ISSUE**

Does the Note following section 3384(b) create an exception to the prohibition in the cited safety order against wearing gloves near machinery that creates a danger of entanglement?

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<sup>2</sup> Some evidence indicated the knee-level rope operated as an emergency stop switch. Either way, normal operation allowed the operator's gloved hand to approach the pinch point.

**FINDINGS AND REASONS  
FOR  
DECISION AFTER RECONSIDERATION**

Section 3384(b) states:

“Hand protection, such as gloves, shall not be worn where there is a danger of the hand protection becoming entangled in moving machinery or materials.

“Exception: Machinery or equipment provided with a momentary contact device as defined in Subsection 3941.

“NOTE: 1. As used in subsection (b) the term entangled refers to hand protection (gloves) being caught and pulled into the danger zone of the machinery. Use of hand protection around smooth surfaced rotating equipment does not constitute an entanglement hazard if it is unlikely that the hand protection will be drawn into the danger zone.”

The rules of regulatory construction require courts and this Board “to give meaning to each word and phrase and to avoid a construction that makes any part of a regulation superfluous.” (*Donley v. Davi* (2009) 180 Cal.App.4<sup>th</sup> 447, 465.) We construe the regulations by according words their common sense meaning based on the evident purpose for which the enactment was adopted. (*In re Rojas* (1979) 23 Cal. 3d 152, 155.) We interpret standards liberally so as to achieve a safe working environment. (*Carmona v. Division of Industrial Safety* (1975) 3 Cal.3d 303, 312-313.) The common sense reading of 3384(b) is a prohibition against the use of gloves in any circumstance where gloves may be drawn in to the machinery or equipment. A note following a safety order does not create an exception. (*C.A. Rasmussen, Inc.*, Cal/OSHA App. 92-1585, Decision After Reconsideration (Sep. 11, 1995).) Rather, such notes must be read to be consistent with the safety order to which they refer. (*C.A. Rasmussen, supra*; *W.M. Lyles Company*, Cal/OSHA App. 85-1018, Decision After Reconsideration (Sep. 1, 1987).) Such notes cannot create an additional basis for a violation, nor can they create an exception to the safety order. (*Rudolph and Sletten, Inc.*, Cal/OSHA App. 81-0265, Decision After Reconsideration (May 28, 1982).)

This Note can be read consistently with the safety order.<sup>3</sup> The Note explains the term “entangled.” It appears to express the intention of the Standards Board that in limited circumstances, such as when the machinery or equipment is smooth, hand protection may be worn if it is unlikely that the hand protection will be drawn into the danger zone.<sup>4</sup> The accident itself shows

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<sup>3</sup> Were it not possible to reconcile the Note with the Safety Order, the unambiguous terms of the Safety Order would prevail. (*W.M. Lyles Company, supra*.)

<sup>4</sup> Among roller configurations which fall within the Note’s description as unlikely to cause a glove to be caught and drawn in to the danger are a pair of smooth rollers running in the same direction, counter-

that a gloved hand will be drawn into the rollers if it gets too close, even given the smooth rollers. The ALJ similarly concluded, “[A]lbeit remote<sup>5</sup>, there was undoubtedly a danger of hand protection – the glove – becoming entangled in the machinery, as the accident demonstrated.”

The Decision correctly concludes the Note does not create an exception. (*C.A. Rasmussen, Inc.*, Cal/OSHA App. 92-1585, Decision After Reconsideration (Sep. 11, 1995).)<sup>6</sup> The configuration of the machine made it almost certain that if the gloved hand entered the zone of danger, the pinch point would catch a glove and draw it in, making it *likely*, rather than “unlikely,” that entanglement would occur. The evidence was uncontradicted that the sheet metal forming machine consisted of two rollers turning in opposite directions so as to draw sheet metal in to the narrow (¼-inch) space between the rollers. The rollers exerted sufficient pressure against one another to hold, move, and change the shape of sheet metal. Also, uncontradicted evidence presented by the Division established that the inward speed of the rollers exceeded the reaction time or speed of a person attempting to pull his or her hand back from or out of the pinch point. The entanglement hazard existed because once any portion of the glove entered the roller gap, it was squeezed by the pressure of the rollers and drawn into them before the operator could react, thus preventing the operator from removing the glove and hand from the machine. No barrier prevented the operator’s hand from approaching the pinch point as the operator guided the sheet metal in to the rollers. The violation of 3348(b) is established.

That such severe injury had not happened in the past is irrelevant to determining whether or not the hazard existed. Whether this injury occurred on the first day of use, or the five hundredth day of use, the machine created the same entanglement hazard. Had the machine not exerted pressure on materials drawn in, if the rollers were farther apart than the width of an operator’s hand, if they turned more slowly, or if for any number of reasons a gloved hand could be easily retracted from the roller machinery zone of danger, or would not be caught in the first place, then an entanglement hazard might not exist, and the safety order may not apply. (*Carris Reels*, Cal/OSHA App. 95-1456, Decision After Reconsideration (Dec. 6, 2000).)

We conclude the Note describes or defines a situation where the entanglement hazard is “unlikely.” In other words, if it is unlikely that a glove entering the danger zone, or pinch point, would be caught and drawn in, and

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running rollers that are of sufficient distance apart that they would not create an entanglement hazard, and smooth rollers that rotate slowly enough that a hand could be freely retracted before being injured.

<sup>5</sup> Whether such danger was “remote” does not determine the applicability of the safety order. We infer the ALJ was addressing Employer’s argument that the many years of use of the machine without an injury renders the danger of such injury “remote.” Such factor can be relevant to the gravity of the penalty, but is not relevant to determining a violation. The ALJ appropriately considered the relevance of the previous safe use of the machine, giving it no weight, as is appropriate in determining the existence of the violation.

<sup>6</sup> The safety order would be clearer if the Note were codified as a subdivision or, if it were the Standard Board’s intent, an exception allowing wearing of gloves in circumstances where entanglement is unlikely.

the rollers are smooth, the Standards Board has deemed the danger of the hand protection becoming entangled as *de minimis*. Here, however, the force of the rollers, their movement, and the small space between them created an entanglement hazard in which a glove will be caught and will be drawn in.<sup>7</sup> The ALJ concluded an entanglement hazard existed on the machine at issue, based on its physical attributes and the occurrence of the serious injury to an employee, and we see no substantial evidence in the record to the contrary.

### **DECISION**

Here, the injurious component of the machine is the smooth rollers' proximity to each other, and the speed and pressure they exert at the zone of danger. There is no ability to withdraw a glove once it enters the small space between the two rollers. It will be caught and drawn in. Thus, even though the rollers are smooth, an entanglement hazard exists. We affirm the decision and uphold the penalty of \$18, 000.00<sup>8</sup> assessed therein.

ART R. CARTER, Chairman  
ED LOWRY, Member

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<sup>7</sup> Although Employer offered its history of injury-free use of the machine for many years in an effort to show entanglement was "unlikely," such history is equally probative of better training, better supervision, and good luck over the years. The evidence showed the sheet metal was formed by feeding material into the machine and that adjustments could be made by turning off the machine first. These operating instructions are administrative controls that reduce the likelihood of injury, but they do not bear on whether the machine itself when in operation posed an entanglement risk. The evidence demonstrated that removing a gloved hand before injury could occur once it entered the zone of danger was not possible on this machine.

<sup>8</sup> The petition did not raise the issue of the classification of the violation as serious. Since this issue was not preserved, the penalty analysis in the decision is final.